(2) of article 5 is relevant for the purposes under consideration. It reads:—

"Where complaint is made to a High Court or any judge thereof that a person is being unlawfully detained the court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the court and release him."

The power to issue directions, orders, or writs of the nature of *habeas corpus* for the enforcements of any of the rights under Part II is however subject to the proviso contained in sub-section (2) of section 25 of the Act, which provides that:—

"All such powers shall be exercised in accordance with any written law or Rules of Court relating to the same."

The only written law relating to directions of the nature of *habeas corpus* can be found under Part XXXVI of the F.M.S. Criminal Procedure Code. Section 365 of the Criminal Procedure Code provides powers to the court of a judge to direct that any person who is alleged to be illegally or improperly detained in public or private custody within the limits of the Federation is to be set at liberty. Under Chapter XXXVI provisions governing applications, affidavits, warrants, service of warrants and appeals were also made. Whatever may have been the position before the Courts of Judicature Act 1964 came into effect, it seems to me that by reason of section 25 of the Act the additional powers of the High Court as set out in the First Schedule must be exercised only in accordance with any written law relating to the same, and Chapter XXXVI of the Criminal Procedure Code, being provision relating to directions in the nature of *habeas corpus*, would apply.

The application for a writ of *habeas corpus* in the present case relates, I think, to a matter which is covered by section 365 of the Criminal Procedure Code, and in view of section 25 of the Courts of Judicature Act, I am of the opinion that the proper procedure would be for the applicant to apply under section 365 and not by way of *ex-parte* originating summons in chambers.

For these reasons I allow the motion.

By consent of parties no order as to costs.

Motion allowed.

Solicitors: *Gurdial Bakan Singh; N. Ramachandran.*

GAN REALTY SDN. BHD. & ORS. v. NICHOLAS & ORS.

[O.C.J. (Raja Azlan Shah J.) April 22, 1969]
[K.L. — Civil Suit No. 828 of 1968]

Specific Relief — Injunction — Application to dissolve ex parte injunction — Agreement for sale of shares not available in open market — Specific performance — Specific Relief (Malay States) Ordinance, 1950, s. 20.

Contract — Shares — Sale of — Specific performance.

This was an application to dissolve the *ex parte* injunction granted to the plaintiffs restraining the defendants from parting with their shares in the the Oriental Bank of Malaya Berhad the 6th defendant. The facts were that the first five defendants were the directors of the 6th defendant bank and they had agreed to sell their respective shares in the bank to the plaintiffs. The plaintiffs claimed specific performance and an injunction. It was argued for the applicants that the agreement was incapable of specific performance and therefore an interim injunction would not lie.

Held, dismissing the application: (1) in order to dissolve or vary an *ex parte* injunction the defendants must satisfy the court that the facts upon which the injunction was granted no longer exist or that it was obtained by misrepresentation or suppression of material facts;

(2) in this case the shares of the bank were not available in the open market and the court could therefore order specific performance of an agreement for the sale of the shares and in this respect the defendants had not established that the circumstances had changed;

(3) there was a delay in filing the application to set aside the *ex parte* injunction and the court would in the circumstances refuse to exercise its discretion in favour of the applicants.

Cases referred to:—

(1) *Duncuft* v. *Albrecht* 59 E.R. 1104.

(2) *Re Schwabacher, Stern* v. *Schwabacher, Koritschoner's Claim* (1908), 98 L.T. 127.

CIVIL SUIT.

K.S. Chung for the plaintiffs.

R.R. Chelliah (*P.S. Moorthy* with him) for the defendants.

Raja Azlan Shah J.: This is an application to dissolve the *ex parte* injunction dated 7th June, 1968 granted by Gill J. (as he then was) to the plaintiffs (a) restraining the 1st, 2nd, 3rd, 4th and 5th defendants from parting with or disposing of any of their shares in the Oriental Bank of Malaya Berhad, the 6th defendant, (b) restraining the 6th defendant from registering the transfer of any of the said shares to any persons other than to the plaintiffs. The *ex parte* injunction was granted before the writ or the statement of claim or any proceedings was served on any of the defendants.

The first five defendants are currently the directors of the said bank. On 4th May, 1968 they negotiated with the plaintiffs concerning

the sale of their respective shares in the bank. The terms and conditions of the agreement are confirmed in a letter dated 5th May, 1968 written by the plaintiffs' former solicitors to the defendants' former solicitors. The plaintiffs claim for specific performance of the agreement and a permanent injunction.

Mr. Chelliah for the defendants drew my attention to the terms and conditions of the said agreement which he says are not capable of specific performance. If that is so, he argues that an interim injunction does not lie. He relies on the provisions of section 20(a), (b), (c), (d) of the Specific Relief (Malay States) Ordinance, 1950 and the averment that the defendants no longer hold the requisite number of shares. He submits that if he succeeds on any of these grounds he is entitled to have the *ex parte* injunction set aside.

The principle of law enacted in that section is not assailable but I am doubtful of its application to the present proceeding. It would mean that a successful applicant for an interim injunction to preserve the matters in *status quo* on the facts relied by him can have that order dissolved or varied on extraneous facts. In my view the sole object of an interim injunction would therefore be defeated. I have no doubt that at the proper time and place Mr. Chelliah's arguments would be given due consideration but I think this is not such an occasion.

In order to dissolve or vary an *ex parte* injunction the defendants must satisfy the court that the facts upon which the injunction was granted no longer exist or that it was obtained by misrepresentation or suppression of material facts. We are here concerned with the former. The said shares are not available in the open market. That is not disputed. Mr. Chung for the plaintiffs relies on the proposition that the court can order specific performance of an agreement for the sale of shares which are not available in the open market. In *Duncuft* v. *Albrecht* [1] the court decreed specific performance of an agreement for the sale of railway shares which were limited in number and not always to be had in the open market. But where the shares in question are such that they can be easily obtained from the open market, so that the loss can easily be quantified in money, the court will not grant specific performance of the contract (see *Re Schwabacher, Stern* v. *Schwabacher, Koritschoner's Claim* [2]). Applying that it is beyond doubt that the agreement to transfer the bank's shares which are not available in the open market can be specifically enforced, for there is no standard for ascertaining the actual loss which would have been caused by its non-performance (see section 11). Here the inconvenience caused to the plaintiffs would be irreparable and could not be remedied by damages.

The defendants have not established that these circumstances have now changed.

Mr. Chung has also brought to my notice the delay in filing this application which was made some six and a half months after the *ex parte* injunction. In my view the time at which this application was made would by itself be an answer to the summons. They had ample facilities to set aside the *ex parte* injunction. They had thought fit to acquiesce in it for a period of some six and a half months. If it is a matter of discretion and the question before me is whether under all the circumstances of this case it is expedient and proper to refuse the intervention of this court and permit the parties to argue the case fully at the trial, the date is most important.

In the circumstances of the case I do not propose to exercise my discretion in favour of the defendants. Costs to the plaintiffs in any event.

Application dismissed.

Solicitors: *Chung & Co.; P.S. Moorthy.*

PUBLIC PROSECUTOR v. LAU SING NGIN

[A.Cr.J. (Wee Chong Jin C.J.) April 23, 1969]

[Singapore—Magistrate's Appeals Nos. 120 and 158 of 1968]

Criminal Law and Procedure — Undesirable publications — Possession of prohibited publication — Proof of possession — Presumption of knowledge of contents and nature of publication — Undesirable Publications Act, 1967, s. 4(2) & (3).

In this case a girl of 19 had been convicted of having possession of a prohibited publication. The facts were that she was riding as a pillion rider on a motor cycle ridden by a friend. The police stopped and searched them and in a plastic bag on the lap of the accused found a song booklet which was a prohibited publication. The accused said the bag did not belong to her and she did not know the contents of the bag. She was convicted but the magistrate gave her a conditional discharge for twelve months. The Public Prosecutor appealed against the order of conditional discharge and the accused cross-appealed against the conviction.

Held, allowing the appeal of the accused: the prosecution in this case had not discharged the onus of proving that the accused had possession of the contents of the bag which was under her control.

MAGISTRATE'S APPEAL.

Isaac Paul Ratnam (Deputy Public Prosecutor) for the Public Prosecutor.

Lim Teck Hui for the respondent.

Wee Chong Jin C.J.: The accused, a girl of 19, was charged with having in her posses-